IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WP(C).No. 22048 of 2006(Y)

CMP.9582/2004 of J.M.F.C., KODUNGALLUR

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PETITIONER:

THULASIDAS, AGED 38 YEARS,
S/O.KRISHNANKUTTY, NEDIYIRIPPIL HOUSE,
P.O.KARIMBRAM, VALAPPAD VILLAGE,
CHAVAKKAD TALUK, THRISSUR.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU
SRI.V.V.JOY

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. CENTRAL BUREAU OF INVESTIGATION,
REP. BY ITS DIRECTOR, NEW DELHI.

4. P.K.MADHU, PRESENTLY WORKING AS
DY.S.P., IDUKKI.

5. P.T.SEBASTIAN, PRESENTLY WORKING AS
S.I. OF POLICE,
MUVATTUPUZHA POLICE STATION, MUVATTUPUZHA.

6. C.S.VINOD, PRESENTLY WORKING AS
S.I. OF POLICE, KORATTY POLICE STATION,
KORATTY, THRISSUR.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
GOVERNMENT PLEADER SRI.GIKKU JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.NO.22048 OF 2006

Dated this the 4th day of December, 2006.

JUDGMENT

The grievance of the petitioner is that no proper action has been taken by the learned Magistrate on a complaint filed by him. The petitioner was allegedly subjected to torture by the police officials. When he was produced before the learned Magistrate, he raised certain complaints orally. The learned Magistrate directed him to give the complaint in black and white. He therefore submitted a written complaint. It is on that complaint that the petitioner alleges that no proper action has been taken.

2. According to the learned counsel for the petitioner, in the peculiar facts and circumstances of the case, the just order to be passed is to refer the complaint to the police for proper investigation. Thereafter investigation must be conducted by a senior, efficient and unbiased police official. If no reference is made under Section 156(3) Cr.P.C, the petitioner may not be able to substantiate his allegations, as the allegation, primarily is of torture while in custody.

3. Report of the learned Magistrate was called for. The report shows that the learned Magistrate proposes to record the sworn statement of the complainant. Of course, even if the learned Magistrate records the sworn statement under Section 200 Cr.P.C, appropriate further direction for investigation/enquiry can be issued

under Section 202 Cr.P.C. The report of the learned Magistrate shows that the petitioner is reluctant to appear and give his sworn statement.

4. Be that as it may, I am satisfied that the ideal order to be passed in the circumstances is to direct the petitioner to appear before the learned Magistrate on the next date of posting. It shall be open to the learned counsel for the petitioner to submit before the learned Magistrate that the ideal course to be followed in the given circumstances is to refer the complaint to the police under Section 156(3) Cr.P.C. Subject to the well settled law on that aspect as indicated in **Kannappan P. v. State of Kerala** [2005 (3) KLJ 161], the learned Magistrate must consider the said request. Merely because the petitioner prays for such reference under Section 156(3) Cr.P.C, the prayer need not necessarily be turned down. The learned Magistrate must consider what is the most appropriate course to be followed in the interests of justice. Appropriate decision must be taken by the learned Magistrate. Needless to say, such decision shall be amenable to challenge in accordance with law.

5. This Writ Petition is, in these circumstances, dismissed, but with the above observations.

R.BASANT
JUDGE

rtr/